



INSIDE STORY – APRIL 2016

The Netherlands: Modulus Group

In November 2015, real estate developer Modulus Vastgoedondernemingen B.V. filed a winding-up petition. Just days after Modulus Vastgoedondernemingen went into liquidation, 45 of its subsidiaries followed suit.

Challenges and Opportunities: An Insiders Perspective

A delayed casualty of the real estate crisis, the high-profile Modulus Group liquidation poses specific challenges for receivers Marc Udink and Mieke Joha (*Udink Advocaten*). Since the remaining value of the company is almost exclusively held up in mortgaged real estate managing a controlled liquidation of those mortgaged assets is an important part of the proceedings. Also the fact the group consists of 45 legal entities makes for a challenging liquidation with interesting (fiscal) complications. With this Inside Story the receivers give an insider's perspective in the proceeding focusing on the Modulus Groups Mortgaged assets.

The Modulus Group Operations Pre-Liquidation

Modulus, a rapidly grown commercial real estate developer financed by 5 major Dutch banks and several eminent private investors, was managed by Ingvar Roozenbeek en Bas Lubbers. The Modulus Group quickly acquired a sizeable portfolio prior to the 2008 real estate crisis, making it one of The Netherlands more promising commercial real estate developers at that time. The value of the assets, approximately €500 million by 2008, dropped dramatically however as a result of the crisis. Modulus was forced to sell a considerable portion of its portfolio since then. What remained were approximately 25 properties (offices and lands) worth approximately €20 million and a €100 million bank debt. Modulus, not being able to cover its operational and financing costs any longer, was left with no other option then to default.

The District Court of The Hague co-appointed Marc Udink and Mieke Joha (*Udink Advocaten*) as receivers.

Modulus' Remaining Portfolio

Most of the remaining Modulus properties are centrally located in the Plaspoelpolder commercial district, Rijswijk (Zuid-Holland). Plaspoelpolder has great development potential due to its proximity to the Major Dutch cities of The Hague, Rotterdam, Utrecht and Amsterdam and easy access to main highways and

railroads connecting the dense Randstad area of the Netherlands. Also the possibility the designated use of the now commercial area will in the near future change to housing make Plaspoelpolder a prime location.

Other than the Plaspoelpolder properties Modulus owns real estate in Utrecht and lands on several locations throughout The Netherlands. The Utrecht properties generate lots of interest also due to its designated use possibly being changed to housing in the near future. The lands were bought by Modulus with development on a longer term in mind.

Former major Modulus developments and properties include, amongst others, Shell's offices in Rijswijk which Modulus developed and sold in 2010 for €81 million, a cluster of properties near Schiphol Airport where Intel and McAfee have their offices and high end housing developments in the The Hague and its surrounding municipalities.

Uncontrolled and Intransparent Transactions Pre-Liquidation

Given the drastic decrease of the company's value as a result of the crisis, Modulus has had difficulties keeping its head above water for years. With its real estate portfolio only representing a fraction of its mortgage debt the mortgage holders stepped in and took control. The Modulus Group no longer operated autonomously but operated supervised by its mortgage holders, safeguarding their interests over Modulus'. The Modulus Group effectively was kept on live support by the mortgage holders to provide opportunity for recovery. Furthermore, Modulus, given its position, was forced to grant power of attorney to its major mortgage holders to sell Modulus property at will, thus giving the mortgage holders the option to sell privately evading the statutory route and the need for a supervised sale under execution.

The mortgage holders, exercising their power of attorney, effectively started an uncontrolled and intransparent informal liquidation of the Modulus assets years before Modulus formally went into liquidation. Up to weeks before the Modulus Group went into liquidation mortgage holders used their power of attorney to (privately) sell major chunks of Modulus' real estate at will. The receivers are examining these transactions further, especially those that took place just before Modulus went into liquidation. Two such transactions have already been renegotiated to make them acceptable to the receivers.

Controlling the process: A Transparent Liquidation of the Modulus Assets

Priority for the receivers after the Modulus Group parent company Modulus Vastgoedondernemingen went into liquidation, was putting a stop to the private sale of mortgaged Modulus assets by the mortgage holders and controlling the process. Ownership of individual properties was spread out over the Modulus Group subsidiaries. Therefore, it was critical to bring the subsidiaries into liquidation as well. The receivers pressed for the liquidation of the 45 Modulus subsidiaries swiftly being ordered. The 45 subsidiaries went into liquidation within days after the Modulus Group parent company. As a result, all granted powers of attorney were revoked by operation of law and the uncontrolled sale of Modulus assets was halted.

Subsequently, the receivers requested the supervisory judge for a cooling-off period according to article 63a of the Dutch Bankruptcy Act. A cooling-off period was allowed for the maximum term of four months, during which the mortgage holders are not allowed to enforce their mortgages by sale.

With these basic tools of insolvency law, the receivers controlled the process and set the conditions for a transparent (further) liquidation of the Modulus Group assets. The receivers continue to believe a controlled sale of the complete portfolio is in the best interest of all creditors. The mortgage holders, now in check, of course have the option to enforce their mortgages by sale under execution after the cooling-

off period. They however would have to follow the statutory route which guarantees transparency. Meanwhile the receivers are actively exploring the market and inviting developers and investors to make a bid for Modulus assets and generate the best possible outcome for all parties involved.

Already several national and international property developers and investors expressed their interest in Modulus assets. The administrators expect to have the complete remaining Modulus Group portfolio liquidated in the months to come.

This Inside story is written by Rik Buitenhuis (rbuitenhuis@udink.nl) of Udink & De Jong, The Netherlands